



**Second Report of  
KSV Kofman Inc.  
as Receiver and Manager of  
the Property of  
2284649 Ontario Inc.,  
2270613 Limited Partnership and  
2270613 Ontario Inc.**

July 25, 2018

## **Contents**

	<b>Page</b>
1.0     Introduction.....	1
1.1    Purposes of this Report .....	1
1.2    Currency .....	2
2.0     Background .....	2
3.0     The Company's Redemption Proposal.....	3
4.0     Other Observations .....	7
5.0     Conclusion.....	7
6.0     Recommendation .....	7

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Receivership Order dated February 6, 2018 .....	A
Sale Process Approval Order dated July 5, 2018.....	B
First Report to Court dated June 15, 2018 (without appendices).....	C
Endorsement of the Honourable Justice McEwen dated July 5, 2018 .....	D
Letter from CMEC to the Company dated July 20, 2018.....	E

### **Confidential Appendix**

Listing Proposal Summary .....	1
--------------------------------	---



COURT FILE NO: CV-18-591534-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF 2284649 ONTARIO INC.,  
2270613 LIMITED PARTNERSHIP and 2270613 ONTARIO INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED

SECOND REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

JULY 25, 2018

## 1.0 Introduction

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on February 6, 2018 (the "Receivership Order"), KSV Kofman Inc. ("KSV") was appointed receiver and manager (the "Receiver") of the assets, undertakings and properties of 2284649 Ontario Inc. ("228"), including the real property located at 250, 252 and 256 Phillip Street, Waterloo, Ontario (collectively, the "Real Property"), and the assets, undertakings and properties of 2270613 Limited Partnership and 2270613 Ontario Inc. (collectively with 228, the "Company") acquired for or used in relation to the Real Property (together with the Real Property, the "Property"). A copy of the Receivership Order is attached as Appendix "A".
2. The principal purpose of these proceedings is to carry out a sale process for the Property (the "Sale Process"). The Sale Process was approved pursuant to a Court Order made on July 5, 2018, a copy which is attached as Appendix "B".

### 1.1 Purposes of this Report

1. The purposes of this report (the "Report") are to:
  - a) provide background information about these proceedings;

- b) discuss the Company's motion (the "Motion") to lift the stay of proceedings to redeem the mortgage (the "Mortgage") on the Company's Property held by China Machinery Engineering Corporation ("CMEC"), the Company's principal secured creditor; and
- c) provide the Receiver's perspective on the Motion.

## 1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 2.0 Background

1. The Real Property subject to these receivership proceedings is summarized in the table below.

Parcel	Address	Status
Parcel "A"	256 Phillip Street	<p>In 2015, the Company completed a 20-storey multi-residential student housing facility presently operating as Blair House. The residence has 426 bedrooms in 106 three, four and five-bedroom units. The facility has commercial units located on the ground floor which are fully leased to retail tenants.</p> <p>The Blair House residence is fully occupied and generating positive cash flow of approximately \$3 million per year. Blair House is also fully leased for the school year commencing September 2018. Blair House is the only receivership property generating cash flow.</p>
Parcel "B"	250 Phillip Street	Undeveloped raw land. The intended student housing project is to be known as Elora House.
Parcel "D"	252 Phillip Street	Early stage construction. Construction activity was suspended upon the Receiver's appointment on February 6, 2018. The completed student housing project is to be known as Hespeler House.

2. CMEC is the Company's principal secured creditor pursuant to the Mortgage and a loan agreement dated June 9, 2014 between the Company and CMEC, as amended. The purpose of the CMEC loan was to fund the construction of Blair House, which was completed in 2015.
3. CMEC claims to be owed approximately US\$72.5 million as at July 13, 2018, plus interest and costs which continue to accrue. The Company disputes the amount of the CMEC debt and believes CMEC is owed approximately US\$54 million. Pursuant to a Court Order dated May 7, 2018, a timetable was set to have the amount of the CMEC debt determined by the Court, and that hearing is scheduled to commence on September 10, 2018.

4. Background information concerning the Company and these proceedings is provided in the Receiver's First Report to Court dated June 15, 2018 (the "First Report") and, accordingly, is not repeated in this Report. A copy of the First Report is attached as Appendix "C", without appendices, with the exception of Confidential Appendix "1" to the First Report, which is being appended on a confidential basis to this Report in order to provide the Court with the Property valuation information provided by the five listing agents that submitted proposals to act as the listing agent for this mandate. The Receiver is proposing that the confidential appendix remain subject to the Sealing Order dated June 22, 2018 for the reasons set out in the First Report.

### **3.0 The Company's Redemption Proposal**

1. The Sale Process contemplates that TD Cornerstone Commercial Realty Inc. ("TD"), the listing agent, will begin marketing the Property on July 31, 2018. TD is presently completing its underwriting process and preparing sale process materials, such as a confidential information memorandum.
2. At the Sale Process approval motion on July 5, 2018, the Company advised the Court that it was attempting to raise capital in order to redeem the Mortgage and terminate the receivership. The Company advised the Court that if it was in a position to redeem the Mortgage, it would bring a motion to lift the stay for this purpose by no later than July 26, 2018. The endorsement of the Honourable Mr. Justice McEwen dated July 5, 2018 referenced the Company's potential lift stay motion and the basis on which it may be brought. A copy of the endorsement is attached as Appendix "D".
3. On July 19, 2018, the Company served its motion materials, including the Affidavit of Yueqing Zhang, the Company's Chief Executive Officer, sworn on July 19, 2018 (the "Affidavit"). The Affidavit sets out that the Company and entities and individuals related to it (the "Related Parties") had received commitment letters from Institutional Mortgage Capital Canada Inc. (the "Lender") to provide financing sufficient to redeem the Mortgage and to pay certain other expenses related to this receivership under four separate facilities (the "Facilities").
4. Following receipt of the Affidavit, CMEC's counsel, Davies Ward Phillips & Vineberg LLP ("Davies"), sent a letter to the Company dated July 20, 2018 setting out CMEC's concerns with the transactions outlined in the commitment letters, including closing risks, the absence of a deposit and the impact upon the Sale Process should the redemption transactions fail to close. A copy of Davies' letter is provided as Appendix "E". CMEC's counsel, Miller Thomson LLP ("Miller Thomson"), responded to the Davies letter on July 23, 2018. The letter was marked confidential and is therefore not attached to this Report, however, it is attached to the supplementary affidavit sworn by Ms. Zhang and served on the evening of July 24, 2018 (the "Supplementary Affidavit"). The Supplementary Affidavit provides a further response to CMEC's concerns and provides an update on the commitment letters, including certain amendments made to each of the commitment letters following service of the Affidavit.
5. Based on its review of the Affidavit, the Supplementary Affidavit and the correspondence exchanged between Davies and Miller Thomson, the Receiver has the following observations and concerns.

- a) The Facilities total \$101.2 million and contemplate that the loans must be fully advanced on or before August 31, 2018, with the standby credit facility (\$42.23 million) requiring 10 days' prior written notice of drawdown. The Facilities are secured by the Real Property, various non-receivership real property held by the Related Parties and/or guarantees provided by the Related Parties<sup>1</sup>. The Facilities are summarized in the table below.

Facility/Property	(\$000) Loan Amount	Term (months)	Interest Rate
First Mortgage (Blair House)	45,000	21	First 18 months: greater of (a) prime plus 3.15% and (b) 6.85% Months 19 to 21: greater of (a) prime plus 5.35% and (b) 9.05%
Second Mortgage (non-receivership properties)	9,500	33	First 30 months: greater of (a) prime plus 7% and (b) 10.7% Months 31 to 33: greater of (a) prime plus 9.5% and (b) 13.2%
Second Mortgage (non-receivership property)	4,500	18	First 15 months: greater of (a) prime plus 8.05% and (b) 11.75% Months 16 to 18: greater of (a) prime plus 10.5% and (b) 14.2%
Standby Credit Facility (non-receivership properties)	42,230	12	First 3 months: greater of (a) prime plus 8.3% and (b) 12% Months 4 to 12: greater of (a) prime plus 12.3% and (b) 25%
Total	101,230		

- b) The Facilities were approved by the Lender's credit committee on July 24, 2018.
- c) The Affidavit did not contemplate payment of a deposit. In its subsequent correspondence and in the Supplementary Affidavit, the Company advised that it is prepared to pay a deposit of approximately \$450,000, representing the Company's calculation of "thrown away" costs that will be incurred in the event that its transaction with the Lender does not close. This is consistent with the Company's "Statement of Issues" dated June 28, 2018 filed in the context of the Sale Process approval motion, which states:

*"Provided an order lifting the stay of proceedings is issued, the Debtor would immediately deliver a deposit in an amount sufficient to cover any costs "thrown away" in relation to the nascent sale process in the event that the financing under the commitment letter fails to close in accordance with its terms and the sale process has to then be undertaken by the Receiver. The amount of the deposit would be as agreed to by the parties or as set by the Court."*

---

<sup>1</sup> The structure of the various Facilities is more fully detailed in the Company's commitment letters which are provided in its motion materials.

- d) CMEC takes the position that the deposit is inadequate in the circumstances and that it does not compensate it for the delay in commencing the Sale Process and closing risks. Contrary to paragraph 22 of the Supplementary Affidavit, CMEC never agreed that the deposit should be limited to the “thrown away” costs, however that term is defined. The Receiver concurs. The Receiver is of the view that any deposit should be meaningful. The Receiver is concerned that the continuous delays to the Sale Process are chilling the market. The Receiver is also concerned that further delays and the overhang of redemption may further impair the Property’s saleability in the event that the financing does not close. Several parties have expressed an interest in the Property, but it is not clear how long they will continue to have an interest, and the Receiver is concerned that the level of interest may be waning in light of the ongoing delays. A meaningful deposit will reflect the Company’s confidence that it will be able to complete its financing with the Lender and will transfer the risk from CMEC, as secured creditor, to the Company, as debtor.
- e) The Company’s estimate of the “thrown away” costs excludes the fees and expenses of the Receiver and its counsel dealing with the redemption issue (the “Incremental Receiver Costs”). The Incremental Receiver Costs are not insignificant. They include reviewing motion materials filed by the Company and CMEC, dealing extensively with counsel to both parties, drafting reports to Court and multiple Court attendances. The Company takes the view that the Incremental Receiver Costs should be paid from the cash on hand generated from Blair House operations. This is reasonable in the event that the Company is able to complete its financing. However, the cash on deposit is an asset secured by CMEC’s debt. If the Company is unable to complete its financing, the Incremental Receiver Costs would be paid from that cash, which will erode recoveries to CMEC.
- f) In the context of chilling the Sale Process, paragraphs 37 and 38 of the Affidavit suggest that the Sale Process should commence on July 31, 2018 “subject to disclosing the debtor’s efforts and intentions” to redeem the Mortgage. In the Receiver’s view, potential bidders are unlikely to spend the time and money to perform due diligence given the specter of redemption and, accordingly, in order to maintain the integrity of the Sale Process and to maximize its effectiveness, the redemption issue must be fully resolved one way or the other prior to the launch of the marketing phase of the Sale Process. Accordingly, in the event that the Court grants the relief sought by the Company, the Receiver does not believe that it is appropriate to commence the marketing phase of the Sale Process prior to August 31, 2018 unless the Company is unable to complete its financing prior to that, in which case the Sale Process could commence immediately thereafter.

g) The commitment letters provide that the Facilities will be made available to the Company by the Lender for itself and on behalf of investors in the Facilities. The commitment letters appear to indicate that the Facilities are syndicated loans and it is common with such facilities that they are in respect of specific projects and that the funds needed to fund them must first be raised, unlike a conventional mortgage lender. The Receiver is concerned that there is a degree of risk that the Lender may be unable to raise the substantial amount contemplated in the commitment letters prior to the funding date, particularly in light of the interest calculation provided in paragraph (i) below and the information in the Confidential Appendix.

h) The closing mechanics contemplated by the commitment letters will need to be amended in order to be achievable. For example, the \$42.2 million standby credit facility is subject to the following condition:

*"It is a condition of the advance of the Loan that (a) all existing indebtedness owing to and all claims made by China Machinery Engineering Corporation be fully and finally repaid, satisfied, released and discharged, except for the disputed amount of approximately \$23,000,000 (the "Disputed Amount"), which shall be paid into Court, and (b) that the existing receivership and related Court proceedings with respect to the Borrower or its affiliates and the properties municipally known as 250, 252 and 256 Phillip Street, Waterloo, Ontario be fully withdrawn and discontinued."*

The Receiver notes that the funding contemplated by the Facilities should be a condition precedent to CMEC's release and discharge of its security and the receivership proceedings can only be brought to completion once CMEC has been paid in full, subject only to a final determination of the amount of the disputed portion of the CMEC debt.

i) As reflected in the table above, interest on each of the each of the Facilities is significant. A calculation of the interest costs for the first year of each facility is provided in the table below.

Facility	(\$000) Year 1 Interest
A - \$45 million First Mortgage	3,181
B - \$9.5 million Second Mortgage	1,068
C - \$4.5 million Second Mortgage	558
D - \$42.23 Standby Credit Facility	10,152
Total	14,959

The Receiver notes that the only receivership property generating positive cash flow is Blair House - its annual free cash flow totals approximately \$3 million. Based on the commitment letters, Facility B appears to satisfy the debt service coverage ratio. The Facility C and D commitment letters are silent as to a debt service coverage ratio. Accordingly, assuming that \$4.1 million of interest is generated from a combination of the Blair House property and the property secured by Facility B, it is unclear to the Receiver how the balance of the interest on the Facilities will be paid in the first year of the Facilities, being approximately \$10.7 million.

## **4.0 Other Observations**

1. Paragraph 31 of the Affidavit states that the receivership has been disruptive as it has left Blair House tenants in “limbo” with respect to their residences and security of tenancy for the school year commencing September 2018. This is a surprise to the Receiver. The property manager for Blair House and Fergus House is related to the Company. Blair House is fully leased for the school year commencing September 2018. Fergus House is not subject to these proceedings. The vast majority of the leasing for Blair House was completed during the receivership proceedings. The property manager has not advised the Receiver of any concerns from existing, future or prospective tenants.
2. Paragraph 39 of the Affidavit, which refers to a “floor price” possibly being created by CMEC, is an attack on the Sale Process approved by the Court on July 5, 2018, and in the Receiver’s view, is not relevant to the redemption issue.

## **5.0 Conclusion**

1. To the extent the Company can complete the financing contemplated by the commitment letters, it would have sufficient funds to redeem the Mortgage.
2. The Company’s proposed deposit is significantly inadequate. The deposit does not address the risk and foregone expenses to CMEC if the financing fails to close. It does not consider the fees and costs of the Receiver and its counsel. The Company is effectively asking the Court to require CMEC to bear the closing risk. In the Receiver’s view, the Company should pay a meaningful non-refundable deposit to CMEC as part of the approval of the Company’s motion. Such a deposit would illustrate confidence that its financing will close and would reduce the risk of the proposed transaction for CMEC.
3. There are several questions surrounding the likelihood of the financing closing, including the manner in which the Company will service the interest on the Facilities.
4. The Receiver continues to be concerned that marketing the Property under the specter of redemption will chill the Sale Process, which has been its concern from the outset of the discussions concerning the Sale Process.

## **6.0 Recommendation**

1. Based on the foregoing, the Receiver recommends that this Honourable Court:
  - a) grant the Motion only if the Company significantly increases the amount of the deposit;
  - b) reject the Company’s suggestion that the Receiver engage in a dual-track process whereby the Sale Process would commence on July 31, 2018 “subject to disclosing the debtor’s efforts and intentions” to redeem the Mortgage; and

- c) direct that the Sale Process only commence once the redemption issue is resolved, with an outside date of August 31, 2018 or a default by the Company obtaining its financing, and that the Sale Process shall commence on September 1, 2018 in the event that the Company has not redeemed the Mortgage by August 31, 2018.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.**

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF  
2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP AND 2270613 ONTARIO INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

Court File No. CV-18-591534-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

MR. JUSTICE McEWEN



) TUESDAY, THE 6<sup>TH</sup> DAY  
)  
) OF FEBRUARY, 2018

CHINA MACHINERY ENGINEERING CORPORATION

Applicant

- and -

2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP, and  
2270613 ONTARIO INC.

Respondents

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

ORDER  
(Appointing Receiver)

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. ("KSV") as receiver and manager (in such capacities, the "Receiver"), without security, of all assets, undertakings and properties of 2284649 Ontario Inc., including the real property for which 2284649 Ontario Inc. is the registered owner as set out on Schedule "A" hereto (collectively, the "Real Property"), and all of the assets, undertakings and properties of 2270613 Limited Partnership and 2270613 Ontario Inc. (collectively, the "Debtors") acquired for, or used

in relation to the Real Property (together with the Real Property, the "Property"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Zhang Xiaofan sworn February 5, 2018 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and the Respondents, and on reading the Consent of KSV to act as the Receiver,

### **SERVICE**

1.       **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2.       **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

### **RECEIVER'S POWERS**

3.       **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a)     to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors in respect of the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business in respect of the Property, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors in respect of the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors in respect of the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in collecting such monies, including, without

limitation, to enforce any security held by the Debtors in respect of the Property;

- (g) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors in respect of the Property, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- (p) to assign 2284649 Ontario Inc. into bankruptcy;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the 2284649 Ontario Inc., including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by 2284649 Ontario Inc.;
- (r) to make or cause to be made such appraisal and investigation of the Property and affairs of the Debtors as to enable the Receiver to examine any disposition or transfer of the Property prior to the date hereof;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect to the Property; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and

shareholders, and all other persons acting on the Debtors' instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property and the business or affairs of the Debtors in respect of the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by

independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that any bank holding accounts in the name of 2284649 Ontario Inc. or any corporate name previously held by 2284649 Ontario Inc., or other bank accounts related to the Property shall provide KSV, in its capacity as Receiver, with immediate access to, and full authorization over, such bank accounts.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

## **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9.       **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors in respect of the Property or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors in respect of the Property or the Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

10.      **THIS COURT ORDERS** that all rights and remedies against the Debtors in respect of the Property, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on; (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH THE RECEIVER**

11.      **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors in respect of the Property, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

12.       **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors in respect of the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors in respect of the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13.       **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post

Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14.       **THIS COURT ORDERS** that the Receiver may, but is not obligated to, enter into one or more agreements with any entity that employs individuals who provide services in respect of the Property or the Debtors. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. The provisions of paragraph 12, above, shall apply without limitation to any arrangements entered into by the Receiver pursuant to this paragraph.

## **PIPEDA**

15.       **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such

information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16.       **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

## LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in

accordance with the Protocol with the following URLs: [ksvadvisory.com/insolvency-cases/2284649-ontario-inc/](http://ksvadvisory.com/insolvency-cases/2284649-ontario-inc/), [ksvadvisory.com/insolvency-cases/2270613-limited-partnership/](http://ksvadvisory.com/insolvency-cases/2270613-limited-partnership/), and [ksvadvisory.com/insolvency-cases/2270613-ontario-inc/](http://ksvadvisory.com/insolvency-cases/2270613-ontario-inc/).

26.       **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors in respect of the Property or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

27.       **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28.       **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29.       **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies

are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

FEB 06 2018

PER / PAR:



## **SCHEDULE "A"**

### **LEGAL DESCRIPTION OF THE REAL PROPERTY**

The real property legally described by the following PINs:

- a) 22365-0226 (LT)
- b) 22365-0227 (LT); and
- c) 23614-0001 (LT) through to and including 23614-0210 (LT).

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$\_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Kofman Inc., the receiver (the "**Receiver**") of all real property for which 2284649 Ontario Inc. is the registered owner as set out on **Schedule "A"** hereto (collectively, the "**Real Property**") and all of the assets, undertakings and properties of, 2270613 Limited Partnership and 2270613 Ontario Inc. (collectively, the "**Debtors**") acquired for, or used in relation to the Real Property (together with the Real Property, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 6th day of February, 2018 (the "**Order**") made in an action having Court file number CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by

the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**KSV ADVISORY INC.**, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE "A" TO THE RECEIVER'S CERTIFICATE**

**LEGAL DESCRIPTION OF THE REAL PROPERTY**

The real property legally described by the following PINs:

- a. 22365-0226 (LT)
- b. 22365-0227 (LT); and
- c. 23614-0001 (LT) through to and including 23614-0210 (LT).

**China Machinery Engineering Corporation** and **2284649 Ontario Inc. et al.**

Applicant

Respondents

Court File No: CV-18-591534-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER  
(Appointing Receiver)**

**Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

James Doris (LSUC #33236P)  
[jdoris@dwpv.com](mailto:jdoris@dwpv.com)  
Tel: 416.367.6919  
Jesse Mighton (LUSC #62291J)  
[jmighton@dwpv.com](mailto:jmighton@dwpv.com)  
Tel: 416.367.7572

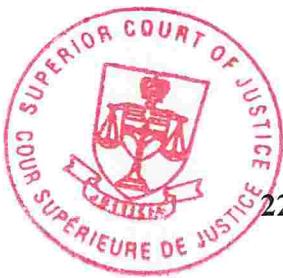
Fax: 416.863.0871

Lawyers for the Applicant

## **Appendix “B”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) THURSDAY, THE 5<sup>th</sup> DAY  
JUSTICE McEWEN ) JULY, 2018



**CHINA MACHINERY ENGINEERING CORPORATION**

Applicant

-and-

**2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP and  
2270613 ONTARIO INC.**

Respondents

**ORDER  
(Sale Process Approval Order)**

**THIS MOTION** made by KSV Kofman Inc., in its capacity as receiver and manager (in such capacities, the “**Receiver**”), of certain property of 2284649 Ontario Inc., 2270613 Limited Partnership and 2270613 Ontario Inc. (the “**Debtors**”), for an order approving the Sale Process (as defined in the First Report of the Receiver dated June 15, 2018 (the “**First Report**”), originally returnable June 22, 2018, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and the appendices thereto, the written submissions filed on behalf of the Receiver, the Applicant and the Debtors and on hearing the submissions of counsel for the Receiver, the Applicant and the Debtors, no one else appearing although duly served as appears from the affidavit of service of Danny M. Nunes sworn June 20, 2018, filed:

**APPROVAL OF SALES PROCESS**

1. **THIS COURT ORDERS** that the Sale Process, as described in Section 4 of the First Report, be and is hereby approved and the Receiver and TD be and are hereby authorized and

directed to perform their obligations under and in accordance with the Sale Process, including under the terms of the TD Listing Agreement (as defined in the First Report), and to take such further steps as they consider necessary or desirable in carrying out the Sale Process.

2. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby specifically requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUL 05 2018

PER / PAR: 

**BETWEEN:**

**CHINA MACHINERY ENGINEERING CORPORATION** - and - **2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP and 2270613 ONTARIO INC.**

Applicant  
Respondents

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

**ORDER**  
(Sale Process Approval Order)

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto ON M5X 1E2

**Edmond F.B. Lamek (LSUC No. 333338Q)**  
Tel: 416.365.4444  
Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)

**Danny M. Nunes (LSUC No. 53802D)**  
Tel: 416.365.3421  
Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

**Lawyers for the Receiver**

## **Appendix “C”**



**First Report of  
KSV Kofman Inc.  
as Receiver and Manager of  
the Property of  
2284649 Ontario Inc.,  
2270613 Limited Partnership and  
2270613 Ontario Inc.**

June 15, 2018

## Contents

	Page
1.0      Introduction .....	1
1.1     Purposes of this Report .....	2
1.2     Restrictions .....	2
2.0      Background .....	2
3.0      Creditors .....	4
3.1     CMEC .....	4
3.2     Lien Claimants .....	4
3.3     Unsecured Creditors .....	4
4.0      Sale Process .....	4
4.1     Request for Proposals from Realtors .....	4
4.2     Confidentiality .....	5
4.3     Sale Process .....	5
4.4     Floor Price .....	7
4.5     Sale Process Recommendation .....	7
5.0      Funding of these Proceedings .....	8
6.0      Overview of the Receiver's Activities .....	8
7.0      Professional Fees .....	9
8.0      Conclusion and Recommendation .....	10

## Appendices

Appendix	Tab
Receivership Order dated February 6, 2018 .....	A
Court Order dated May 7, 2018 .....	B
Summary of Lien Claims .....	C
Request for Proposals .....	D

## Confidential Appendix

Proposal Summary .....	1
Listing Agreement .....	2



COURT FILE NO: CV-18-591534-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF 2284649 ONTARIO INC.,  
2270613 LIMITED PARTNERSHIP and 2270613 ONTARIO INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED

FIRST REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

JUNE 15, 2018

## 1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager (the "Receiver") of the assets, undertakings and properties of 2284649 Ontario Inc. ("228"), including the real property located at 250, 252 and 256 Phillip Street, Waterloo, Ontario (collectively, the "Real Property"), and the assets, undertakings and properties of 2270613 Limited Partnership and 2270613 Ontario Inc. (collectively with 228, the "Company") acquired for or used in relation to the Real Property (together with the Real Property, the "Property"). For greater certainty, the Property also includes, but is not limited to, all residential and commercial leases in respect of 256 Phillip Street, the rental income derived therefrom, as well as all agreements and approvals in respect of the Real Property.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on February 6, 2018 (the "Receivership Order"), KSV was appointed Receiver of the Property. A copy of the Receivership Order is attached as Appendix "A".
3. The principal purposes of these proceedings are to preserve and protect the Property, to deal with claims, including construction lien claims, in a single proceeding and to carry out a Court-supervised sale process for the Property that maximizes value for the Company's stakeholders.

## **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) provide background information about the Company, the Property and these proceedings;
  - b) summarize the recommended marketing process to solicit offers for the development and/or sale of the Property (the “Sale Process”), including the retention of TD Cornerstone Commercial Realty Inc. (“TD”) to act as listing agent for the Property;
  - c) provide an overview of the Receiver’s activities since the date of its appointment;
  - d) detail the fees and disbursements of the Receiver and its counsel, DLA Piper (Canada) LLP (“DLA”), from the commencement of these proceedings to May 31, 2018, and seek approval of same; and
  - e) recommend that the Court issue an order, *inter alia*:
    - approving the Sale Process, including the retention of TD as the listing agent;
    - approving this Report and the Receiver’s activities described herein;
    - sealing the Confidential Appendices to this Report until further order of this Court; and
    - approving the fees and disbursements of the Receiver and DLA as detailed in the affidavits filed by representatives of KSV and DLA in the accompanying motion materials.

## **1.2 Restrictions**

1. In preparing this Report, the Receiver has relied upon the Company’s unaudited financial information, discussions with representatives of the property manager, Rez-One Management Corp. (“Rez-One”), representatives of the Company’s shareholder and the Company’s accounting firm, Grant Thornton Limited (“Grant Thornton”). The Receiver has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review. The Receiver expresses no opinion or other assurance with respect to the financial information presented in this Report.

## **2.0 Background**

1. The Company acquired the Real Property in 2012. At the time of its acquisition by the Company, the Real Property was known municipally as 256 Phillip Street. The Company’s plan for the development of the Real Property contemplated the construction of four separate registered condominiums which would be rented to university students.

2. China Machinery Engineering Corporation (“CMEC”) is the Company’s principal secured creditor pursuant to a mortgage registered against title on June 9, 2014 and a loan agreement dated June 9, 2014 between the Company and CMEC, as amended. The purpose of the CMEC loan was to fund the Company’s construction of the first student residence on the Real Property, which construction was completed in 2015, as more particularly described below.
3. The Real Property is adjacent to the University of Waterloo to the north, on the east side of Phillip Street. In June 2016, the Real Property was legally severed into four parcels – 250, 252, 254 and 256 Phillip Street – and each of the four parcels of the Real Property comprises 1.115 acres and has been zoned and approved for its intended use.
4. Following the legal severance of the Real Property into four parcels, CMEC’s mortgage and related land registrations were amended on June 6, 2016 to partially discharge its security against 254 Phillip Street (Parcel “C”) in order to allow the Company to transfer title to Parcel “C” into a separate entity, JD Development 254 Phillip Street Limited (“JD 254”), in order for JD 254 to source new financing to develop and construct a student residence, Fergus House, on Parcel C. This development project was completed and tenanted in September 2017. None of Parcel C, Fergus House nor JD 254 are subject to these receivership proceedings.
5. The three parcels which are subject to these receivership proceedings are summarized in the table below.

Parcel	Address	Status
Parcel “A”	256 Phillip Street	<p>In 2015, the Company completed a 20-storey multi-residential student housing facility operating as Blair House. The residence has 426 bedrooms in 106 three, four or five-bedroom units. The facility has commercial units located on the ground floor, which are presently leased to retail tenants (Balzac’s Coffee, Share Tea, Ken Sushi, The UPS Store and Bob’s Bakery and Noodle House).</p> <p>The Blair House residence is presently fully occupied and generating cash flow. Blair House is expected to be fully leased prior to the school year commencing September 2018.</p>
Parcel “B”	250 Phillip Street	Undeveloped raw land. Intended student housing project to be known as Elora House.
Parcel “D”	252 Phillip Street	Early stage construction. Construction activity was suspended upon the Receiver’s appointment on February 6, 2018. The completed student housing project is to be known as Hespeler House.

## **3.0 Creditors**

### **3.1 CMEC**

1. CMEC claims to be owed approximately US\$72 million as at May 2018, plus interest and costs which continue to accrue. The Company disputes the amount of the CMEC debt. The Company believes CMEC is owed approximately US\$54 million. Pursuant to a Court order dated May 7, 2018 (the "May 7<sup>th</sup> Order"), a timetable was set for a hearing to determine the amount of CMEC's debt (the "CMEC Debt Litigation"). A copy of the May 7<sup>th</sup> Order is attached as Appendix "B".

### **3.2 Lien Claimants**

1. Since the commencement of these proceedings, fifteen construction lien claims totalling approximately \$12.26 million arising in respect of the construction of Hespeler House on Parcel "D" have been registered on title against the Real Property pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended. Some lien claimants also registered their liens against Parcels A, B and C. A table summarizing the lien claims is provided in Appendix "C".
2. DLA, on behalf of the Receiver, has communicated with each of the lien claimants' counsel. The Receiver has consented to the commencement of lien actions against, among others, the Company, by each of the lien claimants subject to: (a) written confirmation that the actions will be commenced solely for the purpose of allowing the lien claimants to perfect their liens; (b) no further steps will be taken by the lien claimants in the lien actions; and (c) the lien actions are subject to the stay of proceedings in the Receivership Order.

### **3.3 Unsecured Creditors**

1. According to the Company's books and records, as at the date of the Receivership Order, the Company's unsecured obligations totalled approximately \$23.7 million, of which approximately \$13 million was owing to related parties, with the balance largely comprised of amounts owing to trades for construction and other work performed on Parcel "D" prior to the commencement of these proceedings.

## **4.0 Sale Process**

### **4.1 Request for Proposals from Realtors**

1. The Receiver solicited proposals from six realtors to act as listing agent for the Property. The Receiver requested that each realtor provide background information regarding each firm's experience in student housing, knowledge of the Kitchener-Waterloo market, a marketing plan for the Real Property (which considered development options and an outright sale of the Property), an estimate of the value of the Property and the realtor's proposed commission structure. A copy of the request for proposals sent to realtors is attached as Appendix "D".
2. The deadline for proposals was February 23, 2018. Five were received. One realtor declined to submit a proposal as it represents a party which may have an interest in submitting an offer for the Property.

3. The Receiver prepared a summary of the proposals (the “Proposal Summary”), a copy of which is attached as Confidential Appendix “1”. The rationale for seeking a sealing order for the Proposal Summary is provided in Section 4.2 below.
4. The Receiver selected three firms to present proposals to the Receiver. Presentations were conducted at the Receiver’s offices in early March 2018.
5. The Receiver selected TD to act as the realtor on this assignment. The Receiver considered, among other things, its experience working with TD on other matters, TD’s experience selling similar properties, its depth of knowledge of the project, its ability to identify opportunities to enhance value on the project and its commission rate. CMEC has consented to the retention of TD.
6. A copy of TD’s listing agreement is provided in Confidential Appendix “2”. The Receiver proposes to file the TD listing agreement under seal for the reasons provided below.

## **4.2 Confidentiality**

1. The Receiver is of the view that the Proposal Summary and the TD listing agreement be filed with the Court on a confidential basis and be sealed (the “Sealing Order”) as the documents contain information regarding the estimated value of the Real Property which, if made public, may influence the value of the offers submitted in the Sale Process. The Receiver is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

## **4.3 Sale Process**

1. The Receiver recommends that the Court issue an order approving the Sale Process summarized in the table below.

Summary of Sale Process		
Milestone	Description of Activities	Timeline <sup>1</sup>
<i>Phase 1 – Underwriting</i>		
Finalize marketing materials	<ul style="list-style-type: none"> <li>➤ TD and the Receiver to:           <ul style="list-style-type: none"> <li>○ prepare an offering summary;</li> <li>○ populate an online data room;</li> <li>○ prepare a form of confidentiality agreement (“CA”); and</li> <li>○ prepare a Confidential Information Memorandum (“CIM”).</li> </ul> </li> </ul>	by July 15, 2018
Prospect Identification	<ul style="list-style-type: none"> <li>➤ TD to develop a master prospect list and qualify and prioritize prospects.</li> <li>➤ TD will also have pre-marketing discussions with targeted developers and other targeted interested parties.</li> </ul>	

---

<sup>1</sup> The timelines related to the preparation of materials for the Sale Process are subject to change based on, among other things, the availability of information required for TD’s underwriting process.

Summary of Sale Process		
Milestone	Description of Activities	Timeline <sup>1</sup>
Floor price	➤ Confirm whether there will be floor price (this issue is discussed in Section 4.4 below).	By July 27, 2018
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including:           <ul style="list-style-type: none"> <li>○ offering summary and marketing materials printed;</li> <li>○ publication of the acquisition opportunity in <i>The Globe and Mail (National Edition)</i>;</li> <li>○ telephone and email canvassing of leading prospects; and</li> <li>○ meet with and interview prospective bidders.</li> </ul> </li> <li>➤ Assist the Receiver and its legal counsel in the preparation of a standard form of Purchase and Sale Agreement (the “PSA”).</li> </ul>	by July 31, 2018
Stage 2	<ul style="list-style-type: none"> <li>➤ TD to provide detailed information to qualified prospects which execute the CA, including the CIM, access to the data room and the PSA.</li> <li>➤ TD to facilitate diligence by interested parties.</li> </ul>	August 1 to September 19, 2018
Stage 3	<ul style="list-style-type: none"> <li>➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.</li> </ul>	September 19, 2018
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers	<ul style="list-style-type: none"> <li>➤ Short-listing bidders.</li> <li>➤ Further bidding - Interested bidders may be asked to improve or clarify their offers.</li> </ul>	One week following bid deadline
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents.</li> </ul>	One week
Sale Approval Motion and Closing	<ul style="list-style-type: none"> <li>➤ Motion for transaction approval and close transaction.</li> </ul>	Three weeks

2. Additional aspects of the Sale Process include the following:
- a) the Property will be marketed on an “as is, where is” basis;
  - b) parties may bid on some or all of the three parcels comprising the Real Property;
  - c) the Receiver will be entitled to extend the deadline to submit offers if it considers it to be appropriate or necessary in the circumstances;
  - d) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s); and
  - e) any transaction or transactions will be subject to Court approval.

#### **4.4 Floor Price**

1. CMEC is considering if it wishes to participate as a bidder in the Sale Process. CMEC, as the Company's most significant secured creditor, may not be prepared to consent to a sale of the Property unless a certain threshold price is achieved. At the date of this Report, CMEC had not finalized its position in this regard, though the Receiver is advised that internal discussions are ongoing.
2. Approximately one month will be required for TD to complete its underwriting process and to prepare its marketing materials for the sale of the Real Property. The marketing of the Real Property is therefore not expected to start prior to late July 2018, should the proposed sale process order be granted. CMEC will advise the Receiver whether it will require a Floor Price prior to the commencement of the marketing process, (i.e. it will not be obligated to consent to a transaction that is for less than the Floor Price, which, if elected by CMEC, will be an aggregate value not exceeding its confirmed indebtedness plus unpaid property taxes and any unpaid receivership costs to the date of the closing of a transaction). If CMEC elects to require a Floor Price, in the event that none of the offers received are greater than the Floor Price, CMEC will have the right to credit bid its confirmed debt and acquire the Real Property and/or to develop the Real Property within the existing proceedings.
3. In the event that the Sale Process includes a Floor Price, TD will be entitled to a minimum fee provided it performs its mandate as set out in the listing agreement, or as otherwise agreed in writing by the Receiver. The minimum fee will not be payable if: a) there is no Floor Price; or b) TD is determined by the Court to have been grossly negligent or acted with wilful misconduct in the performance of this mandate.

#### **4.5 Sale Process Recommendation**

1. The Receiver recommends that the Court issue an order approving the Sale Process, including the retention of TD as the listing agent, for the following reasons:
  - a) the Sale Process is a fair, open and transparent process intended to canvass the market broadly in order to obtain the highest and best offer for the Property;
  - b) the Sale Process provides flexibility for the Receiver to consider various options for the Property, including sale and development proposals;
  - c) the Receiver has worked with CMEC to settle the terms of the Sale Process. It has taken time for CMEC to obtain required regulatory and internal approvals in China;
  - d) inclusion (or not) of a Floor Price will be communicated to the market at the launch of the Sale Process and, accordingly, should not prejudice any prospective purchaser;
  - e) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and to submit an offer. The marketing process is to last approximately seven weeks given the complexity of the development and that it will be listed for sale over the summer. The proposed timeline contemplates that a transaction is likely to be completed following the conclusion of the CMEC Debt Litigation, which will be helpful for the ultimate resolution of these proceedings. In addition, the Receiver will have the right to extend or amend timelines, as appropriate;

- f) TD's team will be led by individuals who have real estate experience in student housing and the Kitchener-Waterloo area. TD has relationships with certain likely bidders for the Property; and
- g) TD's fee structure is consistent with market. In the event there is a Floor Price, TD will be entitled to a guaranteed fee equivalent to the product of its commission rate multiplied by the Floor Price if there is no buyer for the Real Property. The Receiver believes this is reasonable because it is possible that the Floor Price could have a chilling effect on the Sale Process. It is unlikely that a qualified realtor would spend the time and energy marketing the Real Property given this risk without a similar fee structure.

## **5.0 Funding of these Proceedings**

1. On the date of the Receivership Order, there were limited funds on deposit in the Company's bank accounts. On February 13, 2018, CMEC advanced \$100,000 in order to fund operating and other costs in these proceedings. In accordance with the Receivership Order, the Receiver issued a Receiver's Certificate to CMEC for its advance.
2. Since March 1, 2018, these proceedings have been funded from the cash flow generated from Blair House's operations. As at the date of this Report, there is approximately \$1.48 million in the Receiver's bank account. This amount includes approximately \$870,000 of student deposits, which largely represents prepaid rent for the upcoming school year.
3. Property taxes have not been paid since the commencement of these proceedings. The Receiver understands that the Company's property tax obligation totals approximately \$1.3 million, plus interest which continues to accrue at a rate of 1.25% per month. The property tax obligation will be satisfied from the proceeds of a transaction for the Property, unless otherwise satisfied prior to that date.

## **6.0 Overview of the Receiver's Activities**

1. The Receiver's activities over the course of these proceedings have included:
  - a) corresponding with representatives of CMEC, Davies Ward Phillips & Vineberg LLP, CMEC's legal counsel, and/or DLA in connection with all matters in these receivership proceedings, including the Sale Process, dealing with construction lien issues and operational matters;
  - b) corresponding on a near daily basis with representatives of Rez-One regarding cash management and operational matters;
  - c) monitoring the status of the leasing program for Blair House for the school year commencing September 2018;
  - d) corresponding with representatives of Grant Thornton, including in connection with background information, operational issues and tax matters, including HST and corporate tax filings;

- e) corresponding with utility and other service providers to, *inter alia*, arrange for new accounts to be opened and to deal with billing procedures;
- f) reviewing correspondence from legal counsel to lien claimants in connection with their respective claims;
- g) corresponding with legal counsel and reviewing materials filed in the context of the CMEC Debt Litigation;
- h) corresponding with the Company's insurance providers and arranging for the continuation of the Company's insurance policies;
- i) filing the Company's GST/HST returns on a monthly basis;
- j) conducting the realtor solicitation process;
- k) negotiating the listing agreement with TD;
- l) reviewing vendor invoices and processing payments for post-filing goods and services after discussion with Rez-One;
- m) reviewing and commenting on all Court materials filed in the accompanying motion record; and
- n) drafting this Report.

## **7.0 Professional Fees**

1. The fees and disbursements (excluding HST) of the Receiver from the commencement of these proceedings until May 31, 2018 and those of its legal counsel, DLA, for the same period, total \$205,382 and \$107,316, respectively. The fees of the Receiver and DLA include activities undertaken prior to the date of the Receivership Order in connection with preparing for these receivership proceedings. Due to the uncertain recoveries in these proceedings, the Receiver and DLA are deferring a portion of their fees on this mandate subject to the results of the Sale Process.
2. Detailed invoices in respect of the fees and disbursements of the Receiver and DLA for the referenced billing periods are provided in appendices to the affidavits filed by KSV and DLA in the accompanying motion materials.
3. The average hourly rates for KSV and DLA for the referenced billing periods were \$438.38 and \$478.21, respectively.
4. The Receiver is of the view that the hourly rates charged by DLA are consistent with the rates charged by corporate law firms practicing in the area of insolvency in the Toronto market and that the fees incurred are reasonable and appropriate in the circumstances.

## **8.0 Conclusion and Recommendation**

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (1)(e) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc." The "K" in "KSV" is large and stylized, followed by "SV" and "Kofman" on the next line, and "Inc." at the end.

**KSV KOFMAN INC.  
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF  
2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP AND 2270613 ONTARIO INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “D”**

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

China Machinery

Plaintiff(s)

AND

2284649 Ontario Inc et al

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order     Direction for Registrar (No formal order need be taken out)  
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows):

The Sub Process Approval Order Shall go as per the draft filed & served. Appellee also seeks a declaration that the Resp' be denied the right to bring a motion to lift the stay to allow the Respondent to repay the indebtedness.

I am not prepared to grant such a declaration.

SJC 18

Date

McEAT

Judge's Signature

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

No motion is before me and the Reeps have yet to bring the motion. In my view I do not have the jurisdiction to deny the Reeps the right to bring a motion to lift the stay and prevent them from having their day in Court. Counsel did not have any jurisprudence to support this argument.

I have scheduled the motion for Tel 26/18 for 2 hours. The return date is prior to the date when marketing efforts will begin - Funk, counsel for the Reeps (227 Plant Inc) Conceded that if the motion fails (if brought) the Reeps will not be in thereafter have to participate like an other bidder with no further attempts

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

at redemption.

Motions material of the Registry  
to be delivered by July 19/18

A sealing order shall also go  
with respect to the bidding process  
as the Sierra Club criteria have  
been met.



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

**CHINA MACHINERY ENGINEERING CORPORATION**

Applicant

- and -

**2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP, and  
2270613 ONTARIO INC.**

Respondents

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990,  
c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended

**ENDORSEMENT OF MR. JUSTICE MCEWEN**  
Heard July 5, 2018

Appearing:

Edmond Lamek – for KSV Kofman Inc., the Receiver

Jesse Mighton – for the Applicant

Gregory Azeff – for the Respondents

1. The Sale Process Approval Order shall go as per the draft filed and signed.
2. The Applicant also seeks a declaration that the Respondents be denied the right to bring a motion to lift the stay to allow the Respondents to repay the indebtedness.
3. I am not prepared to grant such a declaration.

4. No motion is before me and the Respondents have yet to bring the motion. In my view, I do not have the jurisdiction to deny the Respondents the right to bring a motion to lift the stay and prevent them from having their day in Court. Counsel did not have any jurisprudence to support this in any event.

5. I have scheduled the motion for July 26, 2018 for two hours. The return date is prior to the date when marketing efforts will begin. Further, counsel for the Respondents (including 22706113 Limited Partnership and 2270613 Ontario Inc.) concedes that if the motion fails (if brought) the Respondents will thereafter have to participate like any other bidder with no further attempts of redemption.

6. Motion materials of the Respondents are to be delivered by July 19, 2018.

7. A sealing order shall also go with respect to the bidding process as the *Sierra Club* criteria have been met.

A handwritten signature in black ink, appearing to read "Michael Egan". The signature is fluid and cursive, with a distinctive flourish at the end.

China Machinery Engineering Corporation and 2284649 Ontario Inc. et al.

Applicant

Respondents

Court File No: CV-18-591534-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**UNOFFICIAL TRANSCRIPT OF  
ENDORSEMENT OF MR. JUSTICE MCEWEN  
HEARD JULY 5, 2018**

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSO #333338U)  
[edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)  
Tel: 416.365.4444

Danny M. Nunes (LSO #53802D)  
[danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)  
Tel: 416.365.3421

Lawyers for the Receiver

## **Appendix “E”**

July 20, 2018

**BY EMAIL**

Ms Kyla E. M. Mahar and  
Mr. Greg Azeff  
Miller Thomson LLP  
Scotia Plaza, Suite 5800  
40 King Street West  
PO Box 1011  
Toronto, ON M5H 3S1

Dear Kyla and Greg:

**RE: China Machinery Engineering Corp. v. 2284649 Ontario Inc. et al – Court File No. CV-18-591534-00CL**

As you know, we are counsel to China Machinery Engineering Corporation (“**CMEC**”) in respect of the above-referenced proceedings.

I am in receipt of your motion record served yesterday in respect of a motion by 2284649 Ontario Inc. (“**JD**”) returnable on July 26, 2018 seeking to lift the stay of proceedings (the “**Motion Record**” and “**July 26 Hearing**”, respectively).

CMEC has a number of concerns with the transactions proposed in the Motion Record(the “**Proposed IMC Transactions**”), which are set out below with a view to resolving these preliminary issues in advance of the July 26 Hearing.

**1. Deposit**

The Proposed IMC Transactions do not include any deposit payable to CMEC up-front. In our view, the lack of a deposit calls into question the credibility of the Proposed IMC Transactions, and serves to place the entire risk of execution solely on CMEC.

As we have previously expressed to you on a number of occasions, a deposit is appropriate in order to protect CMEC from the expenses and risks it will incur in the event that the Proposed IMC Transactions fail to close. We also note that JD’s submissions filed in connection with our attendance on July 5, 2018 specifically contemplated an up-front deposit in an amount as agreed to by the parties or as may be directed by the Court, “in an amount sufficient to cover any costs ‘thrown away’ in relation to the nascent sale process”. Oral representations were also made to Justice McEwen to this effect. On this

logic, the deposit must be in an amount sufficient to cover any costs incurred by CMEC and the Receiver pursuant to the Proposed IMC Transactions in the event such transactions do not ultimately close. Any deposit amounts above such expenses would be applied to reduce JD's secured debt to CMEC, providing a benefit to your client in the circumstances.

Accordingly, it is a condition of our consent to your relief that CMEC receives a non-refundable deposit prior to the July 26 Hearing in an amount of no less than CAD\$5,000,000 to cover any expenses and the risk to be incurred by CMEC and the Receiver in connection with the Proposed IMC Transactions.

## **2. Conditions**

CMEC is also concerned with the conditionality of the commitment letters provided by Institutional Mortgage Capital Canada Inc. ("IMC") contained as Exhibits G, H, I and J (collectively, the "**Commitment Letters**") to the affidavit of Yeuqing Zhang sworn July 19, 2018 (the "**Zhang Affidavit**") and contained in the Motion Record. Because a number of these conditions are within the control of JD or IMC, coupled with the fact that no deposit is proposed to be paid to CMEC, the Commitment Letters do not reflect a binding proposal, as either JD or IMC may walk away prior to closing with little to no financial consequence.

Accordingly, we request that IMC provide CMEC with confirmations that the conditions set out below have been waived or satisfied, all in advance of the July 26 Hearing. The below list is made with reference to the Blair House Student Residence – First Mortgage Loan Commitment Letter attached as Exhibit G to the Zhang Affidavit, however, CMEC's request extends to such similar conditions as may be contained in all Commitment Letters.

Item	Description	Request
1.	Maximum LTV	Waive
2.	Minimum DSCR	Waive
3.	Fees, (b)(i) and (ii) (i.e. the commitment fee and syndication fee)	Waive

Item	Description	Request
4.	Closing Conditions, specifically:  - all closing/underwriting deliveries and other matters within the control of JD, and set out in Schedule B  - with respect to the Property, the physical, environmental, financial condition, title and all tenants and leases	Confirm or Waive
5.	Credit Committee	Confirm approval
6.	Schedule B – Underwriting/Closing Deliveries, items 2, 3, 4, 5, 6, 7, and 8	Confirm or Waive

We view these waivers and confirmations as essential to providing a minimum assurance that both JD and IMC are committed to the success of the Proposed IMC Transactions.

### **3. CMEC Conditions**

As drafted, the CMEC Condition set out at page four of the Standby Credit Facility Commitment Letter (Exhibit J to the Zhang Affidavit) is neither factually correct nor mechanically feasible.

As set out at paragraph 43 of the Zhang Affidavit, the disputed difference between the amounts asserted by CMEC and the amount alleged by JD is US\$18,010,528, plus expenses which continue to accrue (the “**Disputed Debt Amount**”).

However, the CMEC Condition only contemplates a disputed amount of CAD\$10,000,000 – a difference of CAD\$13,872,954.90.<sup>1</sup> This amount should be increased to the full Disputed Debt Amount, including a reserve for accruals.

Additionally, it is unclear to us how this increase impacts JD’s proposed financing. It seems to us that JD would not have sufficient funding to close the Proposed IMC Transactions, including funding the reserve amounts referenced at paragraphs 15 and 54 of the Zhang Affidavit as well as the various interest reserves provided for in each of the Commitment Letters that are, in the aggregate, quite substantial, if the reserve is increased to correct the Disputed Debt Amount.

---

<sup>1</sup> Using the July 19, 2018 Bank of Canada exchange rate of USD\$1 = CAD\$1.3255.

There are also significant issues with respect to the timing and scope of discharges and releases to be provided by CMEC, as well as the timing of amounts to be paid pursuant to the Standby Commitment Letter that need to be resolved if this proposal is to be executable.

For example, CMEC could not provide the releases required by the CMEC Condition unless it has received full payment of the undisputed debt amount, and is satisfied that the Disputed Debt Amount, plus reserves, have been paid into trust pursuant to formal escrow arrangements.

Accordingly, CMEC requests that the CMEC Condition be amended prior to the July 26 Hearing to reflect the actual Disputed Debt Amount, and with amended mechanics to address the fundamental timing issues outlined above.

#### **4. Sale Process**

It is suggested at paragraphs 37 and 38 of the Zhang Affidavit that the Receiver should conduct the marketing phase of the Sale Process simultaneously with the parties' efforts to close the Proposed IMC Transactions. This suggestion has no air of commercial reality.

In addition to the obvious costs considerations of proceeding along a dual track, doing so would result in the exact chilling effect that CMEC has been defending throughout the weeks leading up to the approval of the Sale Process. Similarly, the complaints listed at paragraphs 39 of the Zhang Affidavit are moot now that the Sale Process has been approved by court order, and are clearly aimed at exacerbating the same chilling effect they purport to avoid. We note that JD did not raise these concerns at either attendance in connection with the approval of the sale process on June 22 and July 5, 2018.

Under no circumstances will CMEC consent to a dual-track process. Instead, in the event that JD can satisfy our concerns (including the need for a significant deposit), we are prepared to consider appropriate procedures to pause the Sale Process during the pendency of the Proposed IMC Transactions, with the ability to re-commence the Sale Process immediately if such transactions do not close at any time for any reason. In this scenario, the successful closing of all Proposed IMC Transactions would result in the immediate termination of the Sale Process and the Receivership.

This, combined with a substantial up-front deposit payable to CMEC, as outlined above, are essential protections for CMEC that need to be addressed as gating issues prior to the July 26 Hearing.

#### **5. Information Requests**

CMEC also requests clarification from JD as to how it intends to address certain other financial risks inherent to CMEC in the Proposed IMC Transactions. Please confirm that:

- the sources and uses statement for Proposed IMC Transactions consider the interest and other reserves set out in the Commitment Letters and the fees of TD Cornerstone Commercial Realty Inc. contemplated in the applicable listing agreement . We request that you provide a sources and uses statement so we can ensure the Proposed IMC Transactions provide funding for

CMEC's secured debt and all of the other costs and expenses that need to be considered in the circumstances;

- the Zhang Affidavit overstates the aggregate value of the Commitment Letters by \$1.07 million (the aggregate loan amounts set out in the Commitment Letters appear to total \$101.23 million – not \$102.3 million as set out in the Zhang Affidavit);
- JD has signed each of the Commitment Letters (the versions included in the Zhang Affidavit being unexecuted by the JD entities and individuals, despite references to funds having been paid by JD to IMC already, set out in the Zhang Affidavit); and
- the exchange rate to be used for currency conversions between CAD and USD shall be the Bank of Canada posted rates for the business day prior to any such repayments.

The requests set out in this letter are aimed at decreasing the risks to CMEC of the Proposed IMC Transactions by (i) providing up-front compensation to CMEC for any expenses and risk that it may or will incur in connection with the Proposed IMC Transactions; (ii) ensuring JD and IMC are the parties bearing these risks, and not CMEC; and (iii) correcting fundamental errors in the transaction documents that create uncertainty as to JD's ability to complete the Proposed IMC Transactions.

JD or IMC's refusal of any of these reasonable requests will be a clear indication that the Proposed IMC Transactions lack credibility and expose CMEC and other creditors to unnecessary delays, risk and other deleterious consequences.

There are also a number of mechanical issues relating to the closing of the Proposed IMC Transactions that are not set out in this letter that will need to be addressed if these transactions are to close successfully. However, these issues should only be addressed if we are able to resolve the gating issues set out in this letter. CMEC expressly reserves all rights with respect to the Motion Record and the Proposed IMC Transactions contemplated therein.

We look forward to receiving your responses to the foregoing as soon as possible.

Yours very truly,



Jesse Mighton

JM

CC: Jay Swartz, James Doris (*Davies Ward Phillips & Vineberg LLP*)  
Bobby Kofman, David Sieradzki (*KSV Advisory Inc.*)  
Edmond Lamek, Danny Nunes (*DLA Piper (Canada) LLP*)